

AMENDATORY SECTION (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

WAC 173-183-100 Definitions. (1) "Columbia River estuary environment" means the habitat and all other public resources associated with or dependent on the estuarine waters of the Columbia River.

(2) "Compensation schedule" means the set of procedures enumerated in WAC 173-183-300 through 173-183-870 to determine the public resource damages resulting from an oil spill for cases in which damages are not quantifiable at a reasonable cost.

(3) "Damages" means the amount of monetary compensation necessary to:

(a) Restore any injured public resource to its condition before sustaining injury as a result of an oil discharge in violation of chapter 90.48 or 90.56 RCW, to the extent technically feasible, including any loss in value incurred during the period between injury and restoration in cases where damages are quantifiable at a reasonable cost; or

(b) Adequately compensate for the loss or diminution in value as determined through application of the compensation schedule provided in WAC 173-183-300 through 173-183-870 in cases where damages are not quantifiable at a reasonable cost.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department of ecology, or his or her designee.

(6) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(7) "Estuarine environment" means the habitat and all other public resources associated with or dependent on estuarine waters of the state.

(8) "Estuarine waters" or "estuarine waters of the state" means the waters within state jurisdiction that are semienclosed by land but have open, partly obstructed, or sporadic access to the ocean, and in which seawater is at least occasionally diluted by freshwater runoff from land. Estuarine waters of the state include adjacent tidal flats and beaches up to the limit of tidal inundation or wave splash. For purposes of this chapter, estuarine waters of the state include those designated on the map attached as Appendix 1 to this chapter, and the portion of the Columbia River estuary within state jurisdiction upstream to river mile 46 or the line drawn perpendicularly across the river which touches the

upstream end of Puget Island.

(9) "Freshwater stream, river, and lake environment" means the habitat and all other public resources associated with or dependent on the streams, rivers, and lakes under state jurisdiction.

(10) "Freshwater wetland" or "freshwater wetlands" means lands transitional between terrestrial and freshwater aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water, and lands having one or more of the following attributes at least periodically: The land supports predominantly hydrophytes; the substrate is predominately undrained hydric soil; and the substrate is nonsoil and saturated with water or covered by shallow water at some time during the growing season each year.

(11) "Freshwater wetland environment" means the habitat and all other public resources associated with or dependent on the freshwater wetlands of the state.

(12) "Freshwaters" or "freshwaters of the state" means all waters of the state except those classified as marine and estuarine waters of the state as defined in this chapter, including lakes, rivers, streams, ponds, other surface waters and wetlands.

(13) "Habitat" means the substrate and complement of associated biota not otherwise included in the vulnerability rankings in the applicable compensation schedule(s) that is part of this chapter.

(14) "Immediate removal" or "immediately removes" means removal of the spilled oil, or portions thereof, from the receiving environment by the potentially liable party within six hours of spill initiation.

(15) "Initial department responder" means the department of ecology spill responder who first arrives at the scene of the spill.

(16) "Injury" or "injuries" means an adverse change, either long- or short-term, to a public resource resulting either directly or indirectly from exposure to a discharge of oil in violation of chapter 90.48 or 90.56 RCW.

(17) "Loss in services" means a temporary or permanent reduction in the ability of the resource to provide its use or benefit to the public or to other resources.

(18) "Loss in value or lost value" of a damaged resource means the amount equal to the sum of consumptive, nonconsumptive, and indirect use values, as well as lost taxation, leasing, and licensing revenues during the period between injury and restoration; indirect use values may include existence, bequest, option, and aesthetic values.

(19) "Marine and estuarine habitats" mean the habitats found in marine and estuarine waters of the state as defined in this chapter.

(20) "Marine birds" means all seabirds, shorebirds, waterfowl, raptors and other avifauna that are dependent on marine and estuarine environments of the state for some portion of their life requirements including feeding, breeding, and habitat.

(21) "Marine environment" means the habitat and all other

public resources associated with or dependent on marine waters of the state.

(22) "Marine fish," in context of the compensation schedule, means the species listed in Appendix 2.

(23) "Marine mammals" means the cetaceans, pinnipeds, sea otters, and river otters associated with marine and estuarine waters of the state.

(24) "Marine waters" or "marine waters of the state" means all coastal waters not appreciably diluted by freshwater, including open coastal areas, straits, and euhaline inland waters extending from the seaward limit of state jurisdiction to:

(a) The landward limit of tidal inundation or wave splash; or

(b) The seaward limit of estuarine waters of the state.

(25) "Not quantifiable at a reasonable cost" means any diminution in value of a public resource that cannot be measured with sufficient precision or accuracy by currently available and accepted procedures within a reasonable time frame.

(26) "Oil" or "oils" means (~~((naturally occurring))~~) oil of any kind that is liquid ((hydrocarbons)) at atmospheric temperature and pressure (~~((coming from the earth, including condensate and natural gasoline,))~~) and any fractionation thereof, including, but not limited to, crude oil, petroleum gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by P.L. 99-499.

(27) "On scene coordinator" (OSC) means the department official who supervises the spill response team and compiles the initial report concerning the facts and circumstances of the spill for the department.

(28) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(29) "Potentially liable party" means the person or persons who may be liable for damages resulting from an oil spill.

(30) "Preassessment screening" means the investigation and determination of the facts and circumstances surrounding an oil spill which are used to determine whether a damage assessment investigation should be conducted, or alternatively, whether the compensation schedule will be used to assess damages.

(31) "Public resources" or "publicly owned resources" means fish, animals, vegetation, land, waters of the state, and other resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state.

(32) "Reasonable cost" for a damage assessment means a cost that is anticipated to be less than the amount of damages that may have occurred or may occur.

(33) "Receiving environment" means waters of the state exposed to the spill and all public resources associated with or dependent

on the exposed waters.

(34) "Resource damage assessment committee" or "RDA committee" means the preassessment screening committee established under RCW 90.48.368 and charged with determining whether to conduct detailed damage assessment studies or to apply the compensation schedule for oil spills into waters of the state, and overseeing reconnaissance and damage assessment activities.

(35) "Restoration or enhancement projects or studies" means an activity that is intended to restore, replenish, restock, or replace public resources, or to further investigate the long-term effect of resource injuries as determined by the RDA committee for the benefit of the public.

(36) "Salmon," in context of the compensation schedule, means the species listed in Appendix 3.

(37) "Scientific advisory board" means the advisory group established by the department to assist in development of the compensation schedule as required by RCW 90.48.366.

(38) "Season" or "seasons" means winter, spring, summer, and/or fall, where winter occurs during the months December through February, spring occurs during the months March through May, summer occurs during the months June through August, and fall occurs during the months September through November.

(39) "Shellfish," in context of the compensation schedule, means the species listed in Appendix 4, but does not include privately grown shellfish on public lands.

(40) "Spill" means an unauthorized discharge of oil into waters of the state.

(41) "State" means state of Washington.

(42) "State trustee agencies" means the state agencies with responsibility for protecting and/or managing public resources.

(43) "Subregion" or "subregions" means the areas into which state marine and estuarine waters have been divided for purposes of the compensation schedule as designated on the maps attached as Appendix 1.

(44) "Technical feasibility" or "technically feasible" means that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the public resource before the injury.

(45) "Trust resources" means the public resource(s) under a particular state agency's jurisdiction for protection and/or management.

(46) "Unquantifiable damage" means any diminution in value of a public resource that cannot be measured with sufficient precision or accuracy by currently available and accepted procedures within a reasonable period of time.

(47) "Waters of the state" or "state waters" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(48) "Wetland" or "wetlands" means lands transitional between

terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water, and lands having one or more of the following attributes at least periodically: The land supports predominantly hydrophytes; the substrate is predominantly undrained hydric soil; and the substrate is nonsoil and saturated with water or covered by shallow water at some time during the growing season each year.

[Statutory Authority: Chapter 90.48 RCW. 92-10-005 (Order 91-13), § 173-183-100, filed 4/23/92, effective 5/24/92.]